

United States District Court

for

District of Guam

FILED
DISTRICT COURT OF GUAM

JUL 24 2006

MARY L.M. MORAN
CLERK OF COURT

**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearings is Attached)

Name of Offender: **Charlie Frances Lizama**

Case Number: **CR 03-00054-001**

Name of Sentencing Judicial Officer: **Honorable John S. Unpingco**

Date of Original Sentence: **September 3, 2003**

Original Offense: **Possession of Methamphetamine Hydrochloride with Intent to Distribute, in violation of 21 U.S.C. § 841(a)(1).**

Original Sentence: **30 months imprisonment followed by five years supervised release with conditions that he: not commit another federal, state, or local crime; not illegally possess a controlled substance; refrain from any unlawful use of a controlled substance; submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter; not possess a firearm, destructive device, or any other dangerous weapon; comply with the standard conditions of supervision; refrain from the use of any and all alcoholic beverages; participate in a substance abuse program, which may include testing for use of drugs or alcohol; obtain and maintain gainful employment; perform 200 hours of community service; and pay a \$100 special assessment fee.**

Type of Supervision: **Supervised Release**

Date Supervision: **January 18, 2006**

PETITIONING THE COURT

☐ To extend the term of supervision _____ years, for a total term _____ years.

☒ To modify the conditions of supervision as follows:

1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

CAUSE

On September 2, 2005, the Ninth Circuit, in United States v. Stephens, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

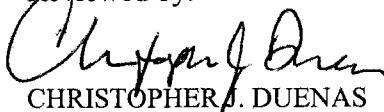
To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated Charlie Lizama's history of drug use. Methamphetamine is Mr. Lizama's drug of choice. The drug has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help detect drug use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender. To address the implications of United States v. Stephens Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Mr. Lizama's mandatory condition to set the maximum number of tests that he must submit at eight per month.

Mr. Lizama was released from federal custody on January 18, 2006, to the Western District of Washington. Jurisdiction of the case remains with the District of Guam. According to the Probation Office in Western District of Washington, Mr. Lizama executed an admission form for consuming methamphetamine on June 2, 2006.

Based on the information above, this Officer respectfully requests that the Court modify the conditions of supervised release, pursuant to 18 U.S.C. § 3583(e)(2) as outlined above. The modification will address the implications of United States v. Stephens as well as allow the Probation Office to effectively monitor Mr. Lizama's drug abuse. Attached is Probation Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision, of Mr. Lizama's consent to the modification.

Reviewed by:

Respectfully submitted,


CHRISTOPHER J. DUENAS

by: 
ROBERT I. CARREON

Chief U.S. Probation Officer

U.S. Probation Officer

Date: 7-14-2006

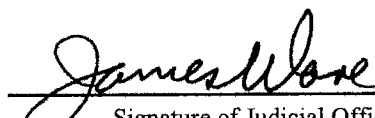
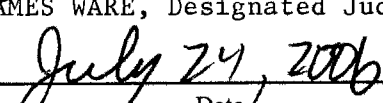
Date: 7/14/06

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other

RECEIVED
JUL 17 2006

**DISTRICT COURT OF GUAM
HAGATNA, GUAM**


Signature of Judicial Officer
JAMES WARE, Designated Judge

Date: July 24, 2006

United States District Court

WESTERN District of Washington

Docket Number: CR03-00054

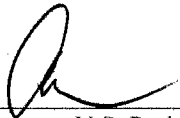
Waiver of Hearing to Modify Conditions of Supervised Release

I, CHARLIE FRANCES LIZAMA, have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

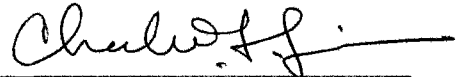
The defendant shall submit to one drug and/or alcohol test within 15 days of placement on probation (or release from imprisonment) and at least two periodic drug and/or alcohol tests thereafter not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

Witness:



U.S. Probation Officer

Signed:



Supervised Releasee

6-27-06

Date